



Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W., Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

Requester: Benjamin Cunningham

Request Number: 12-4031 Date of Receipt: September 26, 2012

Subject: Self (specific records)

NOV - 8 2012

Dear Requester:

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph(s) checked below apply:

1. ☐ A search for records located in EOUSA - _____ has revealed no responsive records regarding the above subject.
2. ☒ A search for records located in the United States Attorney's Office(s) for the Southern District of New York has revealed no responsive records regarding the above subject.
3. ☐ After an extensive search, the records which you have requested cannot be located.
4. ☐ Your records have been destroyed pursuant to Department of Justice guidelines.
5. ☐ Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

This is the final action on this above-numbered request. You may appeal this decision on this request by writing to the **Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001**. Both the letter and envelope should be marked "FOIA Appeal." Your appeal must be received by OIP within 60 days from the date of this letter. If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. §16.9.

Sincerely,

Susan B. Gerson
Assistant Director



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

$\begin{array}{ccc} \sim & \sim & \sim \\ \sim & \sim & \sim \end{array}$

Mr. Benjamin Cunningham
No. 1
2429 Southern Boulevard
Bronx, NY 10458

Re: Appeal No. AP-2013-00936
Request No. 12-4031
ADW:MWH

Dear Mr. Cunningham:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to records concerning your alleged Federal Crime Victims status located in the United States Attorney's Office for the Southern District of New York.

After carefully considering your appeal, I am affirming EOUSA's action on your request. EOUSA informed you that it could locate no records responsive to your request in its files. I have determined that EOUSA's action was correct and that it conducted an adequate, reasonable search for responsive records.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the actions of EOUSA in response to your request.

If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Annex D. Wm

Sean R. O'Neill
Chief
Administrative Appeals Staff

JOSE E. SERRANO
16TH DISTRICT, NEW YORK

COMMITTEE
APPROPRIATIONS

WASHINGTON OFFICE
1127 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3216
(202) 225-4361
FAX (202) 225-0001

Congress of the United States
House of Representatives
Washington, DC 20515-3216

SUBCOMMITTEE
HATING, DEMOCRAT, FINANCIAL
SERVICES AND
GENERAL GOVERNMENT
MEMBER, COMMERCE, JUSTICE, SCIENCE
MEMBER, INTERIOR AND ENVIRONMENT

MEMBER, CONGRESSIONAL
HISPANIC CAUCUS

SENATOR WHITE

BRONX OFFICE
1231 JACARANTE AVE, 4TH FLOOR
BRONX, NY 10474
(718) 620-0084
FAX (718) 620-0658

NEW YORK OFFICE

OFFICE CASE NUMBER

1530194

NAME/INDICATOR: BENJAMIN CUNNINGHAM

ADDRESS/DIRECTION: 2429 SOUTHERN BLVD

APT#: ONE

ZIP CODE/ZONA POSTAL: 10458

PHONE/TELEFONO: (718) 295-2581 MOBILE/CELULAR: (347) 879-1717

SS#

A#/IDENTIFICACION

CASE ISSUE/ASUNTO

- ① MISPRISON OF FELONY COMPLAINT AGAINST TWO FEDERAL JUDGES
- ② FOIL REQUEST AGAINST DOJ; JUDGE BATT'S LETTER & FEDERAL CRIME
- ③ FBI AGENCY REFERRAL AGAINST NYPD AGENCY BUS DRIVER. VICTIM SERVICE

The information you are interested in will be investigated. The office will notify you of the results by telephone or by mail as soon as possible. Please **DO NOT** call for results. Thank you.

La información por cual usted esta interesada/o sera investigada. Esta oficina le informara el resultado por telefono o por carta lo mas pronto posible. Por favor, para saber el resultado, **NO ES NECESARIO LLAMAR**. Gracias.

I hereby give my authorization for information to be given to Congressman Jose E. Serrano or to his staff.

Yo doy mi autorización para que se le de información al Congresista Jose E. Serrano o a sus empleados.

SIGNATURE/FIRMA:

Benjamin Cunningham

DATE/FECHA:

July 16th, 2012

SI:/PUBLIC/FORMS/CONSTITUENTPRA/DOC

Civil Rights/Civil Liberties

11/18/12

Congressman Serrano believes that the federal government must work to provide all Americans with equal protection under the law and to help those groups that have traditionally been discriminated against. More must be done to prevent discrimination at the workplace, and the government must provide assistance for those groups who have been discriminated against both at the workplace and at school. The promise of America is that if you work hard enough, you can succeed. We must bring reality closer to that lofty rhetoric.

Civil Rights

Help with a Federal Agency

If you can't get an answer from a federal agency in a timely fashion, or if you feel you have been treated unfairly, my office may be able to help resolve a problem or get you the information you need. While we cannot guarantee you a favorable outcome, we will do our best to help you receive a fair and timely response to your problem.

Residents of the 16th Congressional District of New York can contact me for assistance in dealing with Federal agencies. In order to better serve you, this form will generate a printable page that you should sign and mail to my office.

Please include **all** pertinent information and claim numbers in your correspondence—such as:

Benjamin Cunningham
(347) 879-1717
2429 Southern Blvd #1
Bronx, NY 10458
December 27, 2012
12 Civ 1935 (RMC)
Federal Crime Victim Agency Is
Linked To My Foreclosure Status

To: Congressman Jose E. Serrano (D-NY)
(202) 225-4361
2227 Rayburn HOB
Washington, DC 20515

To: Mr. Kerry W. Kircher-Esq
U.S. Congress' General Counsel
(202) 225-9700
219 Cannon Building
Washington, DC 20515

To: U.S. Congress House's Ethics Committee
(202) 225-0710
1015 Longworth House Office Building
Washington, DC 20515

To: Eric Holder
United States' Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530



ACCEPTED AS
COPY ONLY
R. R. M.
12/26/12

2013-01-03 11:52

CHARLES E. SCHUMER
NEW YORK

COMMITTEES

BANKING

DEMOCRATIC POLICY & COMMUNICATIONS

FINANCE

JUDICIARY

RULES

United States Senate

WASHINGTON, DC 20510

October 4, 2012

Judith C. Appelbaum, Assistant Attorney General
Office of Legislative Affairs
U. S. Department of Justice
950 Pennsylvania Avenue, NW
Room 1145
Washington, DC 20530

Re: Benjamin Cunningham
24-29 Southern Blvd.
#One
Bronx, New York 10458

Dear Assistant Attorney General Appelbaum:

I am writing on behalf of a constituent, Benjamin Cunningham, who has contacted my office regarding the status of a response to his FOIA request concerning his Federal Crime Victim Status. It is my understanding that the request is now under file #12-3595. Enclosed for your information and details, please find a copy of the correspondence.

Thank you in advance for reviewing the attached. Please direct your written response to the attention of Maxine in my New York City Office.

Sincerely,



Charles E. Schumer
United States Senate

CES/mg

PLEASE RESPOND TO THE FOLLOWING OFFICE

<input type="checkbox"/> ALBANY: 110 O'Brien Building Room 420 Albany, NY 12207 (518) 431-4070	<input type="checkbox"/> BINGHAMTON: Federal Office Building 15 Henry Street Room M103 Binghamton, NY 13901 (607) 772-6792	<input type="checkbox"/> BUFFALO: 130 South Elmwood #660 Buffalo, NY 14202 (716) 846-4111	<input type="checkbox"/> HUDSON VALLEY: One Park Place Suite 100 Peterskill, NY 10956 (914) 734-1532	<input type="checkbox"/> LONG ISLAND: Two Greenway Plaza 145 Pine Lawn Road Room 300N Melville, NY 11747 (631) 753-0978	<input checked="" type="checkbox"/> NEW YORK CITY: 780 Third Avenue Suite 2301 New York, NY 10021 (212) 486-4430 TDD (212) 486-7661	<input type="checkbox"/> ROCHESTER: Kenneth B. Keating Building 100 State Street Room 3040 Rochester, NY 14614 (585) 263-5866	<input type="checkbox"/> SYRACUSE: 100 South Clinton Room 841 Syracuse, NY 13261 (315) 423-5471	<input type="checkbox"/> WASHINGTON: 322 Hart Senate Office Building Washington, DC 20510 (202) 224-6542 TDD (202) 224-0420
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<http://schumer.senate.gov>



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

OCT 31 2012

The Honorable Charles E. Schumer
United States Senate
Suite 2301
780 Third Avenue
New York, NY 10017

Attn: Maxine

Dear Senator Schumer:

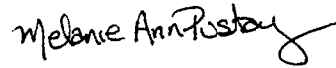
This letter is in response to your letter dated October 4, 2012, sent by your Office to the United States Department of Justice on behalf of your constituent, Benjamin Cunningham. You included correspondence pertaining to Mr. Cunningham's Freedom of Information Act request to the Executive Office for United States Attorneys (EOUSA).

Mr. Cunningham inquired about the status of his FOIA Request No. 12-3595. I can report to you that Mr. Cunningham made a FOIA request to EOUSA concerning his Federal Crime Victim status by letter dated July 26, 2012. By letter dated August 30, 2012, EOUSA informed Mr. Cunningham that it could not process his request until he submitted a notarized signature or a certification of identification under penalty of perjury. Such verification of identity was required because Mr. Cunningham made a request for records about himself. See 28 C.F.R. § 16.41(d) (2012).

Mr. Cunningham provided a signed certification of identity to EOUSA by letter dated September 5, 2012. By letter dated October 24, 2012, EOUSA responded to Mr. Cunningham's request, releasing in full thirty-three pages and withholding in full four pages (copy enclosed). EOUSA also provided Mr. Cunningham with instructions for filing an administrative appeal if he is dissatisfied with EOUSA's response.

I hope that this information will be of assistance to you in responding to Mr. Cunningham. If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Melanie Ann Pustay". The signature is written in a cursive style with a long, sweeping tail on the "y".

Melanie Ann Pustay
Director

Enclosure



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information & Privacy Staff

600 E Street, N.W., Suite 7300, Bicentennial Building

Washington, DC 20530-0001

(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

Requester: Benjamin CunninghamRequest Number: 12-3595Subject of Request: Misconduct Complaint

OCT 24 2012

Dear Requester:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys' Offices.

To provide you the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a [X] partial [] full denial.

Enclosed please find:

33 page(s) are being released in full (RIF);0 page(s) are being released in part (RIP);

4 page(s) are withheld in full (WIF). **The redacted/withheld documents were reviewed to determine if any information could be segregated for release.**

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

Section 552Section 552a

[] (b)(1)

[] (b)(4)

[] (b)(7)(B)

[] (j)(2)

[] (b)(2)

[X] (b)(5)

[] (b)(7)(C)

[] (k)(2)

[] (b)(3)

[] (b)(6)

[] (b)(7)(D)

[] (k)(5)

[] (b)(7)(A)

[] (b)(7)(E)

[] _____

[] (b)(7)(F)

[] In addition, this office is withholding grand jury material which is retained in the District.

(Page 1 of 2)

Form No. 021 - no fee - 6/12

☒ A review of the material revealed:

☒ Our office located records that originated with another government component. **These records were found in the U.S. Attorney's Office files and may or may not be responsive to your request.** These records will be referred to the following component(s) listed for review and direct response to you: U.S. Marshals Service, Office of Inspector General - DOJ, Health & Human Services, and Federal Bureau of Investigation

☐ There are public records which may be obtained from the clerk of the court or this office, upon specific request. If you wish to obtain a copy of these records, you must submit a new request. These records will be provided to you subject to copying fees.

☐ Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

☐ See additional information attached.

This is the final action on this above-numbered request. You may appeal this decision on this request by writing to the **Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001**. Both the letter and envelope should be marked "FOIA Appeal." Your appeal must be received by OIP within 60 days from the date of this letter. If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. § 16.9.

Sincerely,


Susan B. Gerson
Assistant Director

Enclosure(s)



Andrew M. Cuomo
GOVERNOR

Tina M. Stanford, Esq.
DIRECTOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF VICTIM SERVICES
www.ovs.ny.gov

February 2, 2011

BENJAMIN CUNNINGHAM
APT ONE
2429 SOUTHERN BLVD
BRONX NY 10458

Claim#: 508119
Crime Date: 11/29/2005
Claimant: BENJAMIN
CUNNINGHAM
Victim: BENJAMIN CUNNINGHAM

2011 FEB 7 PM 2:03

Dear BENJAMIN CUNNINGHAM:

You have indicated to the Office that you wish to appeal a recent decision related to your claim. The Office of Victim Services (OVS or Office) is presently establishing a calendar for upcoming appeal hearings.

You may appear personally or by telephone before the Office to present your appeal. Your appearance, however, is not mandatory. If you do not request to appear personally or by telephone, your appeal and the decision that follows will be based upon a review of the information that is now in your file and any additional information you may submit to substantiate your claim.

If you indicate on the attached form that you wish to appear before the Office personally or by telephone, I will contact you at the phone number you provide on the form to schedule your hearing. It is your responsibility to ensure that the OVS is aware of any changes to your contact information, such as your address and/or phone number. Any such changes to your contact information should be sent to the Office in writing and contain your original signature.

After the hearing, your claim will be reviewed and you will be notified in writing of the decision. OVS staff may contact you, the victim, or related parties following the hearing for additional information necessary for the Office to make its final decision.

Please complete the attached form and return it in the enclosed stamped envelope within 30 days. Failure to do so may result in your inability to appear before the Office and a decision will be made based on a review of your file. If you have any questions, I can be reached at (518) 457-8066.

Enclosures

Very truly yours,

Eamonn Trainor
Senior Attorney

25 Jamaica Avenue
Brooklyn NY 11207

Howard H. Roberts Jr.
President



New York City Transit



December 23, 2008

Mr. Benjamin Cunningham
2429 Southern Boulevard
Bronx, NY 10458

Dear Mr. Cunningham:

This is in response to your request for assistance in identifying a New York City Transit bus operator. You reported that, on November 29, 2005, at 5:30 a.m., while federal police searched your home, you ran into the street seeking help and boarded a bus which was transporting police recruits to/from the training academy. You indicated that you requested that the bus operator call "911". As everyone on the bus was a police officer, they responded, "We are 911". You further reported that the federal police carried you off the bus by your hands and feet and you were injured. They told the bus operator to drive away and not to file any report. You have subsequently filed a federal lawsuit and need to identify the bus operator to support your case.

On December 16, 2008, you met with two members of my staff and provided them with all the information you had regarding the incident. In our effort to identify the bus operator, we conducted an extensive investigation of our records. Unfortunately, in the absence of a bus number or badge number, we are unable to identify the bus operator. Our operational records do not indicate any report filed for the incident. In addition, there is no record of a bus being loaned to the police or used to transport police on the date in question. As this incident occurred a few years ago, we also checked our records for the day before and the day after the date you indicated.

Sincerely,

A handwritten signature in black ink that reads "Christopher R. Lake".

Christopher R. Lake
Assistant Chief Transportation Officer
Customer Relations
Department of Buses

cc: H. H. Roberts, Jr
J. J. Smith



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

September 15, 2008

Benjamin Cunningham
2429 Southern Blvd.
Bronx, NY 10458

Re: Your Undated Correspondence

Dear Mr. Cunningham:

I have received your undated correspondence concerning employees of the New York City Police Department who executed a search warrant at your home. This office does not have authority to conduct investigations of state and local law enforcement matters. Please refer your claims to your State Attorney General's Office. You may wish to consult with a private attorney for assistance with your claims. There are several national victims' rights organizations that also may be able to assist you. You may reach the National Center for Victims of Crime at (202) 467-8700, the National Crime Victim Law Institute at (503) 768-6600, or the National Organization for Victim Assistance at (703) 536-NOVA.

Sincerely,

A handwritten signature in cursive script that reads "Marie A. O'Rourke".

Marie A. O'Rourke
Victims' Rights Ombudsman

**FEDERAL BUREAU OF INVESTIGATION**

26 Federal Plaza, New York, NY 10278

Complaint FormDate: 9-11-2008 Time: _____**Complainant Information:**Name: BENJAMIN CUNNINGHAM Telephone: (718) 295 2581 DOB: 8-3-1963Language Spoken: ENGLISHAddress: 2429 SOUTHERN BLVD # ONE
BRONX, NY 10458

Name of Employer: _____ POLICE

Facts of Complaint: NOVEMBER 29 2005 (APPROX 0530) ENTERED
 IN THREE FAMILY HOME (GUNS POINTED AT ME) U.S.
 FEDERAL MARSHAL POLICE (SOUTHERN DISTRICT) ALONG WITH
 NYC'S POLICE DETECTIVES IN SEARCH OF MY BROTHER
 TERENCE CUNNINGHAM WHO WAS WANTED UPON FEDERAL
 WARRANTS. TASK FORCE POLICE MEMBERS UNLAWFULLY SEARCHED
 MY HOME & COMPUTER SYSTEM (WITHOUT SEARCH WARRANTS)
 THEN FEDERAL POLICE STOLE \$14,600 FROM MY HOME
 WITHOUT MY KNOWLEDGE WHILE I WAS ASSAULTED THEN
 PLACED UPON FEDERAL HANDCUFFS. I RAN OUT MY HOME
 WEARING NO CLOTHES IN HANDCUFFS SEEKING HELP
 WHEN I WAS INJURED BY NYC'S MTA BUS LOADED
 WITH TRANSIT POLICE REGULARS. FEDERAL POLICE
 ORDERED NYC'S TRANSIT POLICE TO TURN ME BACK
 OVER TO FEDERAL POLICE CUSTODY. FEDERAL POLICE
 CARRIED ME OFF MTA BUS IN THE AIR BACK TO MY
 HOME WHERE THEY REMOVED HANDCUFFS & EXITED MY HOME.

How did complainant learn of this information?
FEDERAL CRIME VICTIM'S OFFICE
VS ATTORNEY'S OFFICE
Complaint taken by P.O.: SGT. Herrera Shield # 10549/11/2008 1213/hrs.

**FEDERAL BUREAU OF INVESTIGATION**

26 Federal Plaza, New York, NY 10278

Complaint FormDate: AUG 10, 2012 Time: _____**Complainant Information:**Name: BENJAMIN CUNNINGHAM Telephone: 347 879-1717 DOB: 8-3-1963Language Spoken: ENGLISHAddress: 2429 SOUTHERN BLVD
BRONX, NEW YORK 10458Name of Employer: F.O.I.A. REQUEST / MISCONDUCT COMPLAINTFacts of Complaint: MARIE O'ROURKE (202) 252-1010
FEDERAL CRIME VICTIMS OMBUDSMAN AGENCY;AUSA DAVID KENNEDY United STATES ATTORNEY OFFICE'S
CIVIL RIGHTS UNITFBI SPECIAL AGENT KRISTINA NORRIS
(212) 348-1000ALL HAVE REFUSED TO PROVIDE THEIR
WRITTEN DECISION CONCERNING MY
FEDERAL CRIME VICTIM STATUS.**How did complainant learn of this information?**FBI SPECIAL AGENT KRISTINA NORRIS CONDUCTED
FEDERAL CRIME VICTIM INTERVIEW WITH ME.Complaint taken by P.O.: LISCJO Shield # 1289

CLOSED, PRO-SE

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-01768-LBS**

Cunningham v. Gillis et al
Assigned to: Judge Leonard B. Sand
Cause: 28:1361 Petition for Writ of Mandamus

Date Filed: 02/25/2009
Date Terminated: 02/25/2009
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff**Benjamin Cunningham**

represented by **Benjamin Cunningham**
2429 Southern Blvd. #1
Bronx, NY 10458
PRO SE

V.

Defendant

John W. Gillis
Director of OVC

Defendant

Kathryn Turman
Program Director at OVC

Defendant

Kristina L. Norris
Special FBI Agent for Crime Victims

Defendant

Tina M. Stanford
*Chairwoman at New York State Crime
Victim Agency*

Date Filed	#	Docket Text
02/25/2009	1	DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Benjamin Cunningham.(rdz) (Entered: 03/02/2009)
02/25/2009	2	COMPLAINT against John W. Gillis, Kathryn Turman, Kristina L. Norris, Tina M. Stanford. Document filed by Benjamin Cunningham.(rdz) (Entered: 02/25/2009)

		03/02/2009)
02/25/2009		Magistrate Judge Douglas F. Eaton is so designated. (rdz) (Entered: 03/02/2009)
02/25/2009	3	ORDER OF DISMISSAL, Plaintiff's requests to proceed in forma pauperis is granted, however, for the reasons set forth, Plaintiff's action is dismissed. Plaintiff raises any remaining 1983 claims, such claims must also be dismissed. Again, while the court must interpret Plaintiff's complaint liberally, the court has analyzed the allegations which constitute Plaintiff's remaining 1983 claims and has found no individual capacity. Therefore, to the extent Plaintiff raises any remaining 1983 claims, they are also dismissed. Because none of Plaintiff's claims discussed above can survive dismissal, and because such claims appear to be the only ones raised over which the Court has original jurisdiction, the Court declines to exercise supplemental jurisdiction over whatever state-law claims Plaintiff also attempts to raise in his complaint. Thus, to the extent Plaintiff also raises state-law claims under the Court's supplemental jurisdiction, such claims are dismissed. The action is dismissed, as the claims raised in Plaintiff's complaint "lack [] an arguable basis either in law or in fact." The Court certifies, pursuant to 28 U.S.C. 1915 (a)(3), that any appeal from this order would not be taken in good faith. (Signed by Judge Leonard B. Sand on 2/25/09) (rdz) (Entered: 03/02/2009)
02/25/2009	4	JUDGMENT. Ordered, Adjudged and Decreed: That the complaint be and is hereby dismissed. The Court certifies pursuant to 28 U.S.C. 1915(a)(3) that any appeal from the Court's order will not be taken in good faith. (Signed by Judge Leonard B. Sand on 2/25/09) (rdz) (Entered: 03/02/2009)

PACER Service Center

Transaction Receipt

11/16/2012 12:04:29

PACER Login:	us5070	Client Code:	
Description:	Docket Report	Search Criteria:	1:09-cv-01768-LBS
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BENJAMIN CUNNINGHAM,

Plaintiff,

-against-

JOHN W. GILLIS, DIRECTOR OF OVC;
KATHRYN TURMAN, PROGRAM DIRECTOR AT
OVC; KRISTINA L. NORRIS, SPECIAL FBI AGENT
FOR CRIME VICTIMS; TINA M. STANFORD,
CHAIRWOMAN AT NEW YORK STATE CRIME
VICTIM AGENCY;

Defendants.
-----X

ORDER OF DISMISSAL

09 Civ. 1768 (LBS)

Plaintiff, who appears *pro se*, brings a complaint seeking an order from the Court directing the “Federal Crime Victim Office located inside [the] FBI Agency to provide crime victim benefits [and] counseling to [Plaintiff] which include[s] paying all medical bills [he] sustained from injuries caused by U.S. Federal Marshal’s police misconduct.”¹ (Compl. ¶ V). Plaintiff also seeks an order from the Court directing the “Federal Crime Victim Office to provide additional medical services to [him]” and “to reimburse [him the] \$4,600 [that the] Federal Marshals seized from [Plaintiff’s] home [and] for documents that were [also] seized from [his] home.” (*Id.*). Plaintiff’s request to proceed *in forma pauperis* is granted, however, for the following reasons, Plaintiff’s action is dismissed.

BACKGROUND

Plaintiff appears to allege that on November 29, 2005, and/or on November 13, 2008, members of the United States Marshal Service “unlawfully broke into [his] home without search warrants; injured [his] body; searched [his] home; seized items [and] more[,] then departed quickly.” (*Id.* ¶

¹ The Court’s *Pro Se* Office received Plaintiff’s complaint on November 24, 2008.

III(B), (C)). Plaintiff also alleges that he was beaten and handcuffed by members of the United States Marshal Service, and was “bounced off” of a bus.² (*Id.* ¶ IV). Plaintiff alleges that he resides in Bronx, New York, and that he made a “911” telephone call seeking assistance from the New York City Police Department (“NYPD”). (*Id.* ¶ III (C)). Plaintiff also alleges that police officers from the NYPD’s 48th Precinct came to his home and made a police report, however, they were “told not to file [the] police report[] into [New York City’s computer database].” (*Id.*). Plaintiff further alleges that the above-mentioned police report is now “missing.” (*Id.*). It appears that Plaintiff alleges that he filed a claim for crime victim benefits from the New York State Crime Victims Board (“Board”), but has been denied such benefits because no corresponding police report could be located by the Board. (*Id.* ¶ III(C), Attachment “Amended Decision” of the Board, dated Nov. 13, 2008 (“Amended Decision”)). Plaintiff also appears to allege that he has attempted to file a claim for crime victim benefits from the federal government, however, he alleges that Defendant Norris, alleged to be employed by the Federal Bureau of Investigation as a Special Agent “for Crime Victims,” (*id.* at 1-2), informed him that his application was denied “because Federal Marshals were acting under color of law.” (*Id.* ¶ III(C)). Plaintiff alleges he appealed that denial to Defendant Gills, who is alleged to be the Director of the United States Department of Justice’s Office for Victims of Crime (“OVC”), but that Defendant Gills

² Plaintiff has attached to his complaint a copy of a “Customer Assistance Record of Information Received” (“Record”), dated November 6, 2008. In that document, Plaintiff states that on November 29, 2005, at 5:30 a.m.,

federal police unlawfully searched [his] home while assaulting [him] looking for [Plaintiff’s] brother wanted on a federal warrant. [Plaintiff] ran out of [his] home into [the] street seeking help [and] was injured by [a Metropolitan Transit Authority] bus transporting [] police to/from [the] training academy. [The] bus driver advised [Plaintiff] to enter [the] bus. [The] federal police ran out [of Plaintiff’s] home [and] entered [the] bus after [Plaintiff]. [The] federal police carried [Plaintiff] by [his] feet [and] by handcuffs off [the] bus then [they] told [the] bus driver to drive away [and to not] file any [reports].

Record.

has not “responded” to Plaintiff’s appeal. (Id. ¶¶ I(B), III(C)).

DISCUSSION

Plaintiff’s Possible Mandamus And/Or Other Claims Under the Victims’ Rights and Restitution Act of 1990 Against Defendants Gills, Norris, and/or Turman

Under 28 U.S.C. § 1361, “[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” Id. A plaintiff seeking *mandamus* relief must demonstrate “(1) a clear right . . . to the relief sought; (2) a plainly defined and peremptory duty on the defendant’s part to do the act in question; and (3) lack of another available, adequate remedy.” Billiteri v. United States Bd. of Parole, 541 F.2d 938, 946 (2d Cir. 1976); Chapdelaine v. Comm’r, United States Parole Comm’n, No. 01 Civ. 7364 (FM), 2002 WL 31115545, at *5 (S.D.N.Y. Sept. 24, 2002) (quoting Billiteri, 541 F.2d at 946). Also, under § 503(a) of the Victims’ Rights and Restitution Act of 1990, Pub. L. No. 101-647, Title V, 104 Stat. 4820 (1990) (“VRRRA”), codified at 42 U.S.C. § 10607(a),

[t]he head of each of department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

VRRRA § 503(a), § 10607(a). Services performed by the above-mentioned federal government officials under the VRRRA include:

- (A) inform[ing] a victim of the place where the victim may receive emergency medical and social services;
- (B) inform[ing] a victim of any restitution or other relief to which the victim may be entitled under this or any other law and [the] manner in which such relief may be obtained;
- (C) inform[ing] a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim[.]

VRRRA § 503(c), § 10607(c). Section 503 of the VRRRA “does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as

required by [§503,] subsection . . . (c)[.]” VRRRA § 503(d), § 10607(d).

Granting Plaintiff’s *pro se* complaint the liberal interpretation that it is due, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (*per curiam*); Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996) (“the pleadings of a *pro se* plaintiff must be read liberally and should be interpreted ‘to raise the strongest arguments that they suggest’”) (citation omitted), it appears that Plaintiff raises mandamus and/or other VRRRA claims against Defendants Gills, Norris, and/or Turman³, arising out their alleged respective failures to provide to Plaintiff the services described above in § 503(c) of the VRRRA. As discussed above, however, no “cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection . . . (c) of” § 503 of the VRRRA exists. VRRRA § 503(d), § 10607(d). Thus, no such claim is recognized pursuant to the VRRRA itself. Also, with respect to Plaintiff’s possible mandamus claims, there is no “clear right . . . to the relief sought” in Plaintiff’s complaint, and [there is no] “plainly defined and peremptory duty on [the part of Defendants Gills, Norris, and/or Turman] to” act to provide such relief. Billiteri, 541 F.2d at 946. Therefore, Plaintiff’s mandamus and/or other VRRRA claims against Defendants Gills, Norris, and/or Turman are dismissed.

Plaintiff’s Possible *Bivens* Claims Against Defendants Gills, Norris, and/or Turman

Also, to the extent Plaintiff raises claims against Defendants Gills, Norris, and/or Turman under the United States Supreme Court’s holding in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging federal constitutional violations on the part of any these Defendants, in their respective individual capacities, see Haines, 404 U.S. at 520-21; Graham, 89 F.3d

³ Defendant Turman is alleged in Plaintiff’s complaint to be employed as “Director of Programs” or “OVC Program Director” by the United States Department of Justice. (Compl. at 1-2).

at 79, such claims must also be dismissed. While the Court is mindful of its duty to construe Plaintiff's complaint liberally, *see Haines*, 404 U.S. at 520-21; *Graham*, 89 F.3d at 79, the Court has analyzed the allegations which constitute Plaintiff's claims and has found no violation of Plaintiff's federal constitutional rights by the above-mentioned federal-officer Defendants, in their respective individual capacities. Therefore, to the extent Plaintiff raises any *Bivens* claims against Defendants Gills, Norris, and/or Turman, such claims are also dismissed.

Plaintiff's Procedural Due Process Claims Against Defendant Stanford Under 42 U.S.C. § 1983

A claim brought under 42 U.S.C. § 1983 provides a plaintiff a vehicle for redressing violations of that plaintiff's federal constitutional rights when such violations are carried out by a person acting under color of state law, in his or her individual capacity. *See* § 1983; *Blessing v. Freestone*, 520 U.S. 329, 340 (1997); *Patterson v. County of Oneida*, 375 F.3d 206, 229 (2d Cir. 2004). "[T]he Due Process Clause of the Fourteenth Amendment prohibits States from depriving any person of property without 'due process of law.' From these 'cryptic and abstract words,' we have determined that individuals whose property interests are at stake are entitled to 'notice and an opportunity to heard.'" *Dusenbery v. United States*, 534 U.S. 161, 167 (2002) (citations omitted). A procedural due process claim for deprivation of property, however, is not cognizable in a federal district court if a state provides adequate remedies for the deprivation of that property interest. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 543-44 (1981) overruled on other grounds by *Daniels v. Williams*, 474 U.S. 327 (1986).

To the extent crime victim benefits are a property interest, New York provides such remedies. In order to apply for crime victim benefits provided by the New York State Crime Victims Board, one must first file a claim with the Board. *See* N.Y. Comp. Codes R. & Regs. tit. 9, § 525.2. A member of the Board then investigates the claim; conducts a hearing, if necessary; and then makes an initial

decision as to whether crime victim benefits are to be awarded to the claimant. See id. §§ 525.3-525.8. Once an initial decision is made by a member of the Board, the claimant has thirty (30) days from receipt of the decision to seek “consideration” of the decision by the Board. Id. § 525.13(a). If the claimant does not seek consideration by the Board in the time allowed, the initial decision becomes the final decision of the Board. Id. § 525.13(d). If unsatisfied with the final decision of the Board, the claimant may then seek judicial review of the Board’s final decision in the appropriate New York State Supreme Court, pursuant to Article 78 of the New York Civil Practice Law and Rules.⁴ Id. § 525.14(a); N.Y.C.P.L.R. §§ 7801-7804; Locurto v. Safir, 264 F.3d 154, 174 (2d Cir. 2001) (“An Article 78 proceeding permits a petitioner to submit affidavits and other written evidence, and where a material issue of fact is raised, have a trial of the disputed issue, including constitutional claims.”). If the claimant is unsatisfied with the decision of the New York State Supreme Court with regard to the Article 78 action he initiated, he may seek leave to appeal that decision in the New York State Supreme Court, Appellate Division. See N.Y.C.P.L.R. § 5701(b)(1), (c). If the claimant is still unsatisfied after a decision is rendered by the Appellate Division, he may then seek leave to appeal that decision in the New York Court of Appeals, New York’s highest court. See N.Y.C.P.L.R. § 5602(a).

To the extent Plaintiff raises § 1983 claims against Defendant Stanford, who is alleged to be the Chairwoman of the Board, (compl. at ¶ I(B)), alleging that he was denied procedural due process with respect to his denied administrative claim for New York crime victim benefits, see Haines, 404 U.S. at 520-21; Graham, 89 F.3d at 79, such claims must be dismissed. As discussed above, it appears that Plaintiff did file a claim for crime victim benefits and that an amended decision was issued by a

⁴ The statute of limitations period in which to bring an Article 78 proceeding is generally four (4) months. See Vandor, Inc. v. Militello, 301 F.3d 37, 39 (2d Cir. 2002) (citing N.Y. C.P.L.R. § 217(1)).

member of the Board on November 13, 2008.⁵ (Amended Decision). Plaintiff, however, has failed to allege any facts demonstrating that he pursued an administrative consideration of that decision within the Board, and if unsuccessful, that he pursued judicial review within the courts of New York, as described above, or in the alternative, that any of the above-mentioned remedies were inadequate. Thus, Plaintiff cannot claim that he was denied procedural due process if he never availed himself of the above-mentioned state remedies or has failed to allege that such remedies were inadequate. See Hellenic Am. Neighborhood Action Comm. v. City of New York, 101 F.3d 877, 881-82 (2d Cir. 1996); Marion v. Ameruso, 837 F.2d 45 (2d Cir. 1988); Vialez v. New York City Hous. Auth., 783 F.Supp. 109, 113-14 (S.D.N.Y. 1991). Therefore, to the extent Plaintiff raises § 1983 procedural due process claims against Defendant Stanford, such claims are dismissed.

Plaintiff's Remaining § 1983 Claims

To the extent Plaintiff raises any remaining § 1983 claims, see Haines, 404 U.S. at 520-21; Graham, 89 F.3d at 79, such claims must also be dismissed. Again, while the Court must interpret Plaintiff's complaint liberally, see Haines, 404 U.S. at 520-21; Graham, 89 F.3d at 79, the Court has analyzed the allegations which constitute Plaintiff's remaining § 1983 claims and has found no violation of Plaintiff's federal constitutional rights by a person acting under color of state law, in his/her individual capacity. Therefore, to the extent Plaintiff raises any remaining § 1983 claims, they are also dismissed.

Plaintiff's Possible State-Law Claims Raised Under The Court's Supplemental Jurisdiction

In addition, to the extent Plaintiff also raises state-law claims under the Court's supplemental

⁵ It is noted that the copy of the amended decision that Plaintiff has attached to his complaint contains instructions as to how to have the amended decision administratively considered by the Board, as described above.

jurisdiction, see Haines, 404 U.S. at 520-21; Graham, 89 F.3d at 79, such claims must be dismissed. Under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental jurisdiction over state-law claims when it “has dismissed all claims over which it has original jurisdiction[.]” § 1367(c)(3). Because none of Plaintiff’s claims discussed above can survive dismissal, and because such claims appear to be the only ones raised over which the Court has original jurisdiction, the Court declines to exercise supplemental jurisdiction over whatever state-law claims Plaintiff also attempts to raise in his complaint. See Martinez v. Simonetti, 202 F.3d 625, 636 (2d Cir. 2000) (directing dismissal of supplemental state-law claims where no federal claims remained). Thus, to the extent Plaintiff also raises state-law claims under the Court’s supplemental jurisdiction, such claims are dismissed.

CONCLUSION

This action is dismissed, as the claims raised in Plaintiff’s complaint “lack[] an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.



LEONARD B. SAND
United States District Judge

FEB 25 2009

Dated:
New York, New York